

**BOROUGH OF MOUNT POCONO  
MONROE COUNTY, PENNSYLVANIA**

**ORDINANCE NO. \_\_\_ OF 2019**

AN ORDINANCE AMENDING CHAPTER 30 OF THE BOROUGH CODE OF MOUNT POCONO.

It is hereby Ordained by the Borough Council of Borough of Mount Pocono, County of Monroe, Commonwealth of Pennsylvania, that Chapter 30 of the Borough Code of Mount Pocono is amended to read as follows:

**Chapter 30  
SHOPPING CART REGULATIONS**

**Article I. General Provisions**

- §30-010 Purpose.**
- §30-020 Definitions.**
- §30-030 Enforcement authority.**
- §30-040 Authority to inspect.**
- §30-050 Alternative remedies.**
- §30-060 Severability.**

**Article II. Signs on Shopping Carts – Required**

- §30-210 Requirements.**

**Article III. Removal, Abandonment, Alteration, Possession – Prohibited**

- §30-310 Prohibition.**
- §30-320 Penalty.**
- §30-330 Exceptions.**

**Article IV. Mandatory Evaluation Report and Plan to Prevent Cart Removal**

- §30-410 Plan elements.**
- §30-420 Evaluation report.**
- §30-430 Timeliness and approval process for prevention plan or evaluation report.**
- §30-440 Penalties for failing to submit a prevention plan or to implement prevention measures.**

**Article V. Retrieval of Shopping Carts by Borough**

- §30-510 Authority to impound.**

**ARTICLE I  
General Provisions**

**§30-010 Purpose.**

A. Abandoned shopping carts constitute a nuisance, create potential hazards to the health and safety of the public, and interfere with pedestrian and vehicular traffic within the Borough of Mount Pocono. Wrecked, dismantled and/or abandoned shopping carts on public or private property create conditions that reduce property

values and promote blight and deterioration within the Borough's neighborhoods.

B. The purpose of this chapter is to make the removal of shopping carts from the premises of a business establishment a violation of this code. In addition, this chapter ensures that storeowners will take action to reduce the removal of shopping carts from a business establishment's premises. This chapter requires business establishment owners to facilitate the retrieval of those shopping carts removed from the establishment's premises.

### **§30-020 Definitions.**

A. "*Abandoned Shopping Cart*" means any cart removed from a business establishment's premises without written permission of the owner and located on either public or private property.

B. "*Owner*" means any person or entity within a business establishment who owns, possesses, or has the power to make a shopping cart available to customers. For the purpose of this chapter, "owner" includes, but is not limited to, the store owner, manager, on-site manager, on-duty manager, or other designated agent of a business establishment providing shopping carts for customer use.

C. "*Parking Area*" means a parking lot or other property provided by a business establishment for use by a customer for parking an automobile or other vehicle.

D. "*Premises*" means the entire area owned, rented, leased, or utilized by a business establishment that provides shopping carts for customer use, including parking areas.

E. "*Shopping Cart*" means a basket which is mounted on wheels or a similar device generally used in a business establishment by a customer for the purpose of transporting goods of any kind. This includes, but is not limited to, laundry, grocery or shopping carts.

### **§30-030 Enforcement Authority.**

The Borough Codes Enforcement Officer (if any), Pocono Mountain Regional Police and their designated agents, (collectively, "the Borough official") shall have the authority and powers necessary to determine whether a violation of this chapter exists and to take appropriate action to gain compliance with the provisions of this chapter and applicable state codes. These powers include the power to issue administrative citations and to inspect public and private property. It also includes the power to impose civil penalties for any violation of this chapter.

### **§30-040 Authority to Inspect.**

The Borough official is authorized to enter upon any property or premises to ascertain whether the provisions of this chapter or applicable state codes are being obeyed, and to make any examinations as may be necessary in the performance of their enforcement duties. All inspections, entries and examinations shall be done in a reasonable manner. If an owner, tenant, occupant or agent or other responsible party refuses to grant the Borough permission to enter or inspect, the Borough zoning or codes officer may seek an administrative warrant pursuant to applicable law.

### **§30-050 Alternative Remedies.**

Nothing in this chapter shall prevent the Borough from pursuing criminal, civil, administrative, or any other legal remedy to address violations of this chapter.

### **§30-060 Severability.**

If any section, subsection, sentence, clause, phrase or portion of this chapter is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this chapter. The Borough Council declares that it would have adopted such section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

## **Article II. Signs on Shopping Carts – Required**

### **§30-210 Requirements.**

Every shopping cart owned or provided by a business establishment in the Borough must have a sign permanently affixed to it that contains the following information:

- A. Identifies the owner of the shopping cart, and the name of the business establishment, if different;
- B. Notifies the public of the procedure to be used for authorized removal of a shopping cart from the establishment's premises, if any;
- C. Notifies the public that the unauthorized removal of a shopping cart from the premises or parking area of a business establishment, or the unauthorized possession of a shopping cart, is a violation of state and municipal law;
- D. Lists a valid telephone number or address for returning the shopping cart removed from the premises or parking area to the owner or retailer.

**Article III.**  
**Removal, Abandonment, Alteration, Possession – Prohibited**

**§30-310 Prohibition.**

It is unlawful to do any of the following acts if a shopping cart has a permanently affixed sign as required by §30-210:

- A. To remove a shopping cart from the premises or parking area of a business establishment with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart;
- B. To be in possession of any shopping cart with serial numbers removed, obliterated, or altered, with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart;
- C. To leave or abandon a shopping cart at a location other than the premises or parking area of the retail establishment with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart;
- D. To alter, convert, or tamper with a shopping cart, or to remove any part or portion thereof, or to remove, obliterate, or alter serial numbers on a cart, with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart;
- E. To be in possession of any shopping cart while that cart is not located on the premises or parking lot of a business establishment, with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.

**§30-320 Penalty.**

Any person who violates any of the provisions of §30-310 is guilty of a summary offense. A third repeat offense within twenty-four (24) calendar months shall be an ungraded misdemeanor.

**§30-330 Exceptions.**

This article shall not apply to any person who has written consent from the owner of the shopping cart authorizing possession or removal of the cart from the business establishment's premises or authorizing any of the acts specified in §30-310.

**Article IV.**  
**Mandatory Evaluation Report and Plan to Prevent Cart Removal**

**§30-410 Plan Elements.**

Every owner of a business establishment providing shopping carts to its customers shall develop and implement a specific plan to prevent customers from removing carts from the business premises. The plan must include the following elements:

A. Notice to Customers. The owner shall provide written notification to customers that the removal of carts from the business establishment's premises is prohibited and a violation of state and local law. This notification may be provided in the form of placards on shopping carts, fliers, warnings on shopping bags, or any other written materials that will effectively inform customers of the law.

B. Physical Measures. At least one specific physical measure shall be implemented to prevent cart removal from the business premises. Optional physical measures include, but are not limited to, the following:

1. Installing disabling devices on all carts;
2. Posting a security guard to prevent customers from removing carts from the business premises;
3. Requiring a security deposit for use of all carts.

**§30-420 Evaluation Report.**

An evaluation report must be submitted each year to the Borough Secretary, Codes Enforcement Officer, or other designated unit of the Borough. The report shall include, but is not limited to, the inventory of carts owned or used by the business establishment as of the date of the report, and the number of carts replaced by that establishment in the previous calendar year due to repair, loss, theft or abandonment. Any owner who fails to submit an evaluation report as outlined in this section by January 31st of each year is guilty of an infraction. If a prevention plan was in place the previous year, the evaluation report shall identify and assess the measures used and approved in the prior year.

**§30-430 Timeliness and approval process for prevention plan or evaluation report.**

A. A proposed plan for preventing shopping cart removal or an evaluation report shall be submitted to the Borough manager, if any, or to the Borough code enforcement officer, for approval within 60 days after the adoption of the ordinance codified in this chapter and by January 31 of each year thereafter. Those affected business establishments opening after the adoption of this chapter shall have 60 days from date they open for business to submit a shopping cart removal prevention plan. The Borough manager, if any, or the Borough code enforcement officer may reject any proposed plan if it determines that the plan is not reasonably likely to prevent the removal of shopping carts from the premises.

B. A business establishment has 30 days from the date of approval to implement its cart removal prevention plan. If the proposed plan is the same as the previous year's, the prevention measure shall continue until the Borough indicates the plan requires modification. Unless otherwise agreed, the owner shall implement modifications to a plan required by the Borough manager, if any, or the Borough code enforcement officer, within 30 days of notification.

**§30-440 Penalties for failing to submit a prevention plan or to implement prevention measures.**

Any owner who fails to submit a plan, implement the proposed plan or implement any required modifications to the plan as required by the Borough, within the time frames as specified in this article, shall be required to place disabling devices on all carts owned, leased, or used by the business establishment, to prevent removal of carts from the business premises and parking lots. Any owner who fails to place a disabling device on all carts, if applicable, is guilty of an ungraded misdemeanor.

**Article V.  
Retrieval of Shopping Carts by Borough**

**§30-510 Authority to Impound.**

A. The Borough of Mount Pocono may impound a shopping cart when all of the following conditions are satisfied:

1. The shopping cart is located outside the premises or parking area of a business establishment. The parking area of a business establishment located in a multi-store complex or shopping center shall include the entire parking area used by the complex or center; and
2. The shopping cart is not retrieved within 48 hours after the owner of the shopping cart, or their agent, receives actual notice from the Borough of the shopping cart's discovery and location.

B. In instances where the location of a shopping cart will impede emergency services, the Borough is authorized to immediately retrieve the shopping cart from public or private property.

C. Any shopping cart that is impounded by the Borough pursuant to this section shall be held at a location that is both:

1. Reasonably convenient to the owner of the shopping cart; and
2. Open for business at least six hours of each business day.

D. Any shopping cart not reclaimed from the Borough within 5 business days of

receipt of a notice of violation by the owner of the shopping cart, may, but is not required to be sold or otherwise disposed of by the Borough.

E. To reclaim the shopping cart, the owner shall pay the Borough the impound rate per cart set by Borough Council then in effect; in addition, the per diem storage fee set by Borough Council then in effect, together with any administrative penalty imposed by§30-510(F), for each day after the 5-day period after receipt of a notice of violation by the owner

E. The Borough may impose an administrative penalty on the owner of a shopping cart in an amount not to exceed \$50.00 for each impounded cart in excess of three during the six-month period immediately preceding the impound date.

F. In addition to all other amounts due hereunder, the Borough is authorized to recover from any owner actual costs incurred for impounding a shopping cart under the authority provided in subsections (A) and (B) of this section.

**ADOPTION**

ORDINANCE ORDAINED AND ENACTED this \_\_\_\_ day of \_\_\_\_\_, 2019, by the Borough Council of the Borough of Mount Pocono, Monroe County, Pennsylvania.

By: \_\_\_\_\_  
Claudette Williams, Council President

ATTEST:

\_\_\_\_\_  
Lori Noonan, Secretary

APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2019.

By: \_\_\_\_\_  
Michael Penn, Mayor